In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-296

JOHN COSMO LEGARI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in the Eastern District of New York of knowingly receiving and having in possession stolen merchandise in violation of 18 U.S.C. 659. He was sentenced to imprisonment for two years. The court of appeals affirmed on June 21, 1972 (Pet. App. A1-A5). The petition for writ of certiorari was not filed until August 21, 1972, and is out of time under Rule 22(2) of the Rules of this Court. There is, in any event, no reason to grant the writ.

The sole issue raised on appeal and in this Court is the sufficiency of the evidence to support the conviction. The opinion of the court below demonstrates that there was ample evidence to support the jury's verdict, including the fact that petitioner was arrested in the act of closing the door of the truck to which the stolen merchandise had just been transferred, and gave a false exculpatory statement. Further review is not warranted.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1972.

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